



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

Morrow

OFFICE OF GENERAL COUNSEL

B-223126

June 3, 1986

Riverfront Cleaning Services, Inc.
Janitorial Service & Supplies
P.O. Box 544
40 N. Jefferson Street
New Castle, Pennsylvania 16103

Attention: Paul Lynch, President

Gentlemen:

This is in response to your letter dated May 12, 1986, in which you question the bidding procedures utilized by the Department of the Army (Army) to award a contract for guard services at the Arlington National Cemetery.

After submitting a proposal, the Army requested that you submit a best and final offer. You believe that this practice could result in the release of bid prices and request that we explain the procedure. Further, you advise that after submitting a best and final offer, the Army rejected your technical proposal because it did not fall within the technical range and that award was made to a higher priced offeror.

The government is authorized by statute to procure goods and services by two basic methods--sealed bidding or competitive proposals. See Competition in Contracting Act of 1984, 10 U.S.C.A. § 2304 (West Supp. 1985). In sealed bidding, award is made without discussions to the responsible source whose bid conforms to the solicitation and is most advantageous to the government considering only price and other price related factors. However, where competitive proposals are solicited, the government awards a contract after discussions with each offeror who submitted a proposal within the competitive range, considering only price and the other factors in the solicitation, or without discussions when the evidence demonstrates that acceptance of the initial proposal without discussions would result in the lowest overall cost to the government.

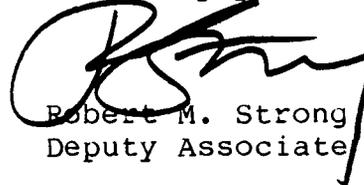
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This procurement involved competitive proposals. When competitive proposals include discussions, the contracting officer issues to all offerors within the competitive range a request for best and final offers. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.611 (1984). While you are concerned that prices may be released, the regulations specifically preclude the disclosure of such information to the public (including prospective contractors) or to anyone in the government not having a legitimate interest. FAR, 48 C.F.R. § 15.413.

Regarding the fact that your proposal was rejected as not within the competitive range, the regulations also provide that the contracting officer, after conducting discussions, may determine that a proposal no longer has a reasonable chance of being selected for contract award and may no longer be considered for selection. See FAR, 48 C.F.R. § 15.609(b). While we are unaware of the specific circumstances of your case, there is nothing improper with the Army rejecting your technical proposal from the competitive range after best and final offers. See RCA Service Company, B-219643, Nov. 18, 1985, 85-2 C.P.D. ¶ 563. Finally, the government is not required to make an award to the lowest priced proposal but, as indicated above, may consider other factors as well. Therefore, the government acts within its authority in making an award to a higher priced offeror if it is considered more technically qualified than the other offerors.

If you intended your May 12 letter as a protest of the above procurement, we note that the protest is untimely because it was not filed within 10 working days after the basis of protest was known or should have been known. 4 C.F.R. § 21.2 (1985). Since you knew of the award on April 25, 1986, your protest was required to have been filed within 10 working days of that date.

Sincerely yours,



Robert M. Strong
Deputy Associate General Counsel